

**Copyright and Digital Media**

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**Digital Media and Copying**

- ◇ Manipulation and copying of images is now easier than ever.
- ◇ Ease of manipulation also makes it more difficult to know whether an end image was created by manipulating protected images, or created with original work.
- ◇ Definitions of what is "copying" have also changed in the digital age: "copying" can include loading copyrighted material in computer memory.
  - ✦ Can also include scanning an image, even if scan if for purpose of transforming the image!

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**Ethical Standards**

- ◇ Reliance upon ethical standards as guidelines for artists' use of pre-existing work is more important than ever, in the digital age.
- ◇ Artists need to recognize their collective interest in mutual respect for each other's work and income, as enforcement in legal realm remains difficult. Collective understanding of ethical standards seems to be the key here.

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### Digital Millennium Copyright Act, 1998

- ✧ Passed to plug some loopholes created by the ease of copying digital media.
- ✧ The act does the following:
  - ✦ Makes it a crime to circumvent anti-piracy measures built into software or other copyrighted material.
  - ✦ Outlaws manufacture, sale, or distribution of code-cracking devices used to make illegal copies.

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### Appropriation and Digital Media

- ✧ Ability to reproduce digital images perfectly, without any loss of quality from generation to generation makes appropriation much easier.
- ✧ Manipulation of images that is possible with computers makes it possible to change them beyond recognition, and to be represented as an original work when it was a manipulation of a pre-existing work.
  - ✦ What is "originality"?
  - ✦ Similar standards apply to digital work as other media.

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### Derivative Works

- ✧ The case *New York Times v. Tasini* held that reproduction of articles in an electronic database was an infringement of copyright.
  - ✦ Authors brought a complaint because they had agreed to publication in *NY Times*, but not in electronic databases (LexisNexis, CD-ROM).
  - ✦ Rationale: articles were reproduced as stand-alones, not as part of entire publication.
- ✧ Photographer Jerry Greenberg sued *National Geographic* over publication of his photos in CD-ROM series and won maximum damages for four stories containing his images.

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### Web Search and Thumbnails

- ✧ *Kelly v. Arriba Soft Corp.* addressed the situation of inline linking (importing images from another source for display).
- ✧ Plaintiff was photographer who claimed infringement by a search engine. Search results displayed as text + thumbnails. Clicking on the thumbnail led to display of a full-sized image.
- ✧ Court: thumbnails OK, because transformative use.
- ✧ Display of full-sized image not addressed by court.

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### Google Thumbnails

- ✧ Case of *Perfect 10 v. Amazon.com* also addressed the question of search engines' creation of thumbnails.
- ✧ Court found that Google's creation of thumbnails did involve the distribution right under copyright, but found thumbnail creation to be fair use:
  - ✦ Purpose of thumbnail is mere identification, not displacing original.
  - ✦ Down-sizing to create thumbnail is a transformation in image and fulfills different purpose and intent than original.
  - ✦ Loss of search capabilities would harm Internet users.

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### Web Linking Issues

- ✧ *Metro-Goldwyn Mayer Studios v. Grokster*: landmark case that found peer-to-peer file sharing illegal. Site hosts inducing others to violate copyright.
  - ✦ Caution about links to sites that contain infringing material: could be similar violation.
- ✧ "Framing" links: practice of presenting material from another site with frame containing ads to benefit the portal presenting the material.
  - ✦ *Washington Post* objected to Total News use of its own frames around *Post* content.

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### Deep Linking

- ✧ Practice of giving direct links to content deep inside another web site.
  - ✦ Permits users to access deep content without going through the primary site portal – and seeing ads that help fund the site.
  - ✦ Permits users to view content running on other site's bandwidth.
  - ✦ Can also bypass subscription restrictions to some content.
- ✧ *Live Nation Motor Sports v. Davis* addressed deep linking to motorcycle racing event coverage, bypassing Live Nation's front ads and material.
  - ✦ Court issued an injunction preventing the linking.

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### Deep Linking and Ticketmaster

- ✧ *Ticketmaster Corp v. Tickets.com* addressed deep linking in context of Tickets.com's use of Ticketmaster's events information. Tickets.com used a web crawler to search Ticketmaster's pages, gather information, and display that info on Tickets.com pages.
  - ✦ Tickets.com might sell tickets to that event, but if not, would link to Ticketmaster for purchasing options
- ✧ Court: this is OK – the accessed information is not protected by copyright, so not a violation.

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### Secondary Violations

- ✧ Secondary infringement violations occur when one party facilitates the infringement by others.
- ✧ Victim of infringement then sues the provider, rather than having to go after the multitude of individuals who infringed content.
- ✧ *Sony v. Universal City Studios* was an early case on this issue – movie maker feared that Sony Betamax video copying technology would facilitate infringement of its movies.
  - ✦ Sued Sony as provider of means of infringement.
  - ✦ U.S. Supreme Court: granted Sony a "safe harbor" in that it did not control the actions of its customers. Product has other lawful purposes.

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### Safe Harbor Limited

- ✧ In *A&M Records v. Napster*, the Sony safe harbor doctrine was sought to protect audio file sharing.
  - ✦ Court did not extend it: found that unlike Sony's situation, Napster could control its clients' actions through monitoring its own network, and was secondarily liable for infringement.
- ✧ Response was formation of the decentralized Grokster network – but court did not buy that, either, and found that Grokster was actively promoting infringement in *Metro-Goldwyn Mayer Studios v. Grokster*.

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### Digital Millennium Copyright Act, 1998

- ✧ Creates some “safe harbors” that protect content providers from digital infringement under some circumstances. For example, provides exemptions for nonprofit libraries, archives, and educational institutions for limited copying.
- ✧ ISPs have no liability for simply transmitting information over the Internet.
  - ✦ But ISPs do have the duty to inform users of their policy not to permit display of infringing material and to remove infringing material from users' web sites when it is located.
- ✧ Limits liability of educational institutions serving as ISPs for infringement in materials posted by faculty members or students.

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### DCMA Safe Harbor: Amazon.com

- ✧ *Corbis v. Amazon.com* case tested the safe harbor provision for service providers under the DCMA.
- ✧ Corbis complained that its copyrighted photos were regularly offered for sale on Amazon.com.
- ✧ Amazon.com responded by removing the offending photos and terminating users' accounts.
- ✧ Court said Amazon.com had acted to best of its ability to prevent infringement, so not liable.

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### American Society of Media Photographers

- ✧ The ASMP attempted to gain some control over use of images with the Media Photographers' Copyright Agency.
- ✧ The ASMP web site has links to image banks, giving clients links to sites on which they can purchase images legally from members.

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### Typefaces and Copyright

- ✧ Typeface designs are not, in themselves, copyrightable. This was established in the early history of copyright law.
- ✧ Computer programs that generate the typefaces, though, are copyrightable.
  - Theory is that creating a scalable font output program that produces harmonious fonts is technically complex and involves many creative decisions. The expression of these decisions is more than just the shape of letters and goes beyond mere functionality.
- ✧ Illegal copying of font software the most prevalent of software violations - approximately 6 copies made per unit sold.

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### Problem: Ownership of Computer Disks

- ✧ This is a problem of special concern to designers.
- ✧ Work is done for client with a design layout program.
- ✧ Designers deliver mechanicals to the clients for approval.
- ✧ Pieces printed.
- ✧ Then later . . . Client wants to revise, and asks for the computer disks.

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### Computer Disks and Artwork

- ✧ The designer is outraged, because wants to keep doing work for the client (instead of having the client do his/her own revisions).
- ✧ But the client paid for the work - so who what does the client own?
  - ✦ Products only?
  - ✦ Mechanicals?
  - ✦ Mechanicals + computer files?

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### Design Products and Copyright

- ✧ Copyright law does not cover this situation very clearly.
- ✧ Designers would own the copyright, as creators.
- ✧ Clients purchased right to display and use physical products created with designs.
- ✧ Clients might have claim to the mechanicals - but even that is not clear.
- ✧ Designer clearly has the right to make derivative works - so that would suggest that the client can't do revisions with computer files.

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### Ethical Standards

- ✧ Graphic Artists Guild Code of Fair Practice provides that the mechanicals and the computer files used to create them are the property of the designer unless expressly purchased by the client.
- ✧ Rationale: the client is really buying reproduction rights, not the original artwork.
- ✧ Where revision is desired, the designer should make the changes.
- ✧ Revisions also subject to additional fees for changes and re-use of the artwork.

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### Design Products

✧ Bottom line here: contracts should be used to specify all of these things, so there is no ambiguity.

- ✦ Specify exactly what the client is buying when contracting for design work.
- ✦ Specify which portion of the copyrights goes to the client and reserve all rights to the designer that are not transferred to the client with the purchase.

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